

Only persons who have actually paid taxes to the Department can file claims for credit. See 86 Ill. Adm. Code 130.1501. (This is a GIL).

March 17, 2000

Dear Xxxxx:

This letter is in response to your letter dated February 15, 2000 to Glen Bower, Director of Revenue. Your letter has been forwarded to the Legal Services Office for a response. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

**1. REQUEST FOR REFUND:**

COMPANY hereby files a refund claim on behalf of BUSINESS, pursuant to General Information Letter, Ill. Dep't of Revenue, January 16, 1996. BUSINESS respectfully requests a refund of sales and use tax and interest involving bad debts.

**2. AMOUNT OF REFUND AND PERIOD:**

Amount of refund requested for the period January 1, 1997 through January 31, 2000:  
\$317,028.02

**3. NAME AND ADDRESS OF CLAIMANT REPRESENTATIVE:**

NAME/ADDRESS

**4. BASIS FOR THE CLAIM:**

**A. Statement of Facts**

BUSINESS provides financing services for new and used car programs involving taxpayers in the automobile industry. BUSINESS purchases automobile loans from taxpayers on a nonrecourse basis.

The transactions, which give rise to the bad debt sales tax refund in this claim, begin with the sale of a new or used automobile by a taxpayer to a purchaser on a credit basis. Immediately following this sale the taxpayer pays the sales tax on the entire amount of the sale to the Illinois Department of Revenue. The taxpayer subsequently assigns the account to BUSINESS. The purchase price includes the amount of sales tax paid by the taxpayer to the Department of Revenue, which is then collected by BUSINESS from the consumer.

The taxpayer assigns the account to BUSINESS on a nonrecourse basis. BUSINESS, therefore, has all of the rights, title and interest of the taxpayer in the account. When a consumer defaults, BUSINESS will not be able in most instances to recover the outstanding balance. At that time, the unrecovered portion of the account becomes a worthless debt for federal income tax purposes.

BUSINESS, as the assignee, is seeking to recover the amount of sales tax paid on the portion of the assigned accounts that have become worthless debts.

## **B. Discussion and Legal Analysis**

Illinois imposes a retailer's occupation tax on persons engaged in the business of selling tangible personal property at retail. Ill. Rev. Stat. ch. 35, para. 120/2; Ill. Admin. Code tit. 86, § 130.101.

It has been Department administrative policy to allow a retailer filing a return for gross sales to take a bad debt deduction. The Department has expressed this policy through numerous private letter rulings. See, Private Letter Ruling No. 96-0020, Illinois Dep't of Revenue, January 16, 1996. The Department reaffirmed this position in a July 1, 1994 General Information Letter. The General Information Letter provides that:

[A] retailer filing on the gross sales basis may take a bad debt deduction as an authorized deduction on the ST-1 return for the month in which that bad debt was written off for federal income tax purposes. General Information Letter, Ill. Dep't of Revenue, January 16, 1996.

Based on the discussion above, BUSINESS is entitled to a refund of sales and use tax.

### **5. DOCUMENTATION:**

Documentation may be supplied upon the Department of Revenue's request.

### **6. REQUEST FOR A CONFERENCE:**

Should the state disagree with this position, COMPANY respectfully requests a conference to review this claim with the Department of Revenue.

### **7. ADDITIONAL INFORMATION:**

COMPANY respectfully reserves the right to produce additional material, further explain its position, and to advance additional arguments at the requested conference.

Please be advised that this claim is based on actual write-offs of uncollectible accounts, net of any recoveries.

Your request for refund is being processed by the Department's Sales Tax Processing Division. Although that Division will make the decision on your request for refund on behalf of your client, we will recommend that it be denied. We cannot agree with your conclusion that the right to file a sales tax claim for credit or refund in Illinois is transferred with the assignment of an underlying account receivable paper. Section 6 of the Retailers' Occupation Tax Act (35 ILCS 120/6) provides that the only person who is entitled to receive a credit or refund when there has been an overpayment of Retailers' Occupation Tax due to a mistake of fact or error of law is the remitter of the tax to the Department. The statute and case law make clear that the only person with standing to file such a claim in Illinois is the person who remitted the tax to the State. Please refer to Snyderman v. Isaacs 31 Ill.2d 192, 1964. Because COMPANY is not the party who paid the tax to the Department, BUSINESS cannot maintain a claim for credit or refund here.

Your letter requests a refund for purported bad debts arising from BUSINESS's purchase of contracts from auto dealers. As mentioned above, the only party authorized to file a claim for credit or refund under the Illinois Retailers' Occupation and Use Tax Acts is the person who has remitted the tax to the Department, and in the context of automobile sales this would be the dealers who sold the automobiles. Please refer to 86 Ill. Adm. Code 130.1960(d), enclosed, where it explains that when a retailer repossesses and then subsequently resells tangible personal property, he is entitled to a repossession credit on the original sale to the extent he has paid the Retailers' Occupation Tax on a portion of the price which he does not collect, or which he is not permitted to retain because of being required to make a repayment thereof to a lending agency under a "with recourse" agreement. In the case of automobile dealers, Section 130.1960(d) also explains how they may file a claim for credit.

In summary, Illinois law does not authorize assignees to file claims for credit or refund. If the transactions involve automobile repossessions, then the dealers could file claims pursuant to 86 Ill. Adm. Code 130.1960(d).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Karl W. Betz  
Associate Counsel

KWB:msk  
Enc.